

REMARKS

I. Introduction

Claims 14 to 29 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable. Reconsideration is respectfully requested.

II. Double Patenting Rejection

Regarding the double patenting rejection, while this rejection is not agreed with, to facilitate matters, Applicants are prepared to file a Terminal Disclaimer upon withdrawal of all other rejections and an indication that the present application is otherwise in condition for immediate allowance.

III. Rejection of Claims 22 and 25 to 27 Under 35 U.S.C. § 103(a)

Claims 14 to 22 and 25 to 29 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,342,592 (“Peter-Hoblyn et al.”).¹ For at least the following reasons, Applicants respectfully submit that Peter-Hoblyn et al. do not render unpatentable the present claims.

Claim 14 relates to an atomizer nozzle for a fuel, including a nozzle body having an upper end and a lower end including spray-discharge orifices for discharging into a metering space and including at least one metering aperture situated at the upper end of the nozzle body, wherein the spray-discharge orifices are situated, with a radial directional component with respect to a center axis of the nozzle body, at elevation steps, and each elevation step includes at least one of the spray-discharge orifices, and at least one nozzle body insert including at least one flow-through opening and being situated in the nozzle body downstream of the at least one metering aperture, at least one of in front of a first of the elevation steps in a direction of fuel flow and between the elevation steps.

The Office Action, at paragraph 5, refers to shaft 40 of Peter-Hoblyn et al. as disclosing a nozzle body, inner tube 41 as disclosing a nozzle body insert, Fig. 4 as disclosing a metering aperture situated at the upper end of the nozzle body, and ports 46 as disclosing elevation steps. As clearly shown in Figure 5 of Peter-Hoblyn et al., port 46 is situated in ***front of*** inner tube 41 (i.e. inner tube 41 is situated ***downstream*** from a ***first*** port 46). In contrast,

¹ It is assumed that “Peter-Hoblyn et al.” as referred to in the Office Action corresponds to U.S. Patent No. 5,342,592. Clarification is nevertheless respectfully requested so that the record is clear.

claim 14 features a nozzle body insert that is in front of a first of the elevation steps (i.e. nozzle body insert is situated upstream from a first elevation step).

The Office Action contends that Figure 4 of Peter-Hoblyn et al. “shows a supply pipe having a diameter smaller than the diameter of the outer wall 43 of the nozzle body 40.” The Office Action’s reference to Figure 4 is entirely misplaced. As an initial matter, there is no discussion of an inner diameter of that which the Office Action considers to be a supply pipe and no discussion of how an inner diameter of that which the Office Action considers to be a supply pipe compares with the diameter of inner conduit 42. Thus, the present rejection is based entirely on speculation or conjecture. Moreover, the Office Action’s analysis is entirely inappropriate based on Federal Circuit precedent. For example, the Federal Circuit has plainly set forth that “patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.” *Hockerson-Halberstadt, Inc. v. Avia Group International, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000) (citing *In re Wright*, 569 F.2d 1124 (C.C.P.A. 1977); see also, *Nystrom v. Trex Co., Inc.*, 339 F.3d 1347 (Fed. Cir. 2003). Accordingly, the Office Action’s reliance on Figure 4 in this regard is entirely misplaced.

In view of all of the foregoing, it is respectfully submitted that Peter-Hoblyn et al. do not render unpatentable the presently pending claims.

Withdrawal of this rejection is therefore respectfully requested.

IV. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: July 13, 2009

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